

MINORITY RECOMMENDATIONS

ISSUES THAT WARRANT FURTHER INVESTIGATION

The U.S. Department of Justice, Internal Revenue Service and Federal Election Commission are already engaged in civil and criminal enforcement actions related to the 1996 and prior federal elections. Examples include the Justice Department's recent criminal convictions of the Kims and Lums and recent indictments of Charlie Trie and Maria Hsia; the IRS's rejection of the National Policy Forum's application for tax-exempt status; and the FEC's 1996 civil suit against the Christian Coalition for coordinating election-related activities with candidates. Many of the persons and organizations discussed in this Report are already under investigation by one or more of these federal agencies. The Minority hereby refers this Report to all three agencies to provide them with the Minority's analysis and to allow evaluation and commencement of investigations of violations of the applicable laws where warranted.

Based upon the evidence before the Committee, and the evidence contained in the Minority report, the Minority also recommends additional investigation by the Department of Justice of individuals and entities that appear to have engaged in the obstruction of this investigation, or willfully provided testimony that they did not believe to be true to the Committee.

RECOMMENDATIONS

By Constitutional design, investigations undertaken by the U.S. Senate are not law enforcement efforts, but inquiries made "in aid of the legislative function." The investigation undertaken by the Senate Committee on Governmental Affairs has exposed numerous flaws in existing law rendering the federal campaign finance system vulnerable to circumvention and exploitation. If the vulnerabilities so starkly revealed are not a catalyst for reform of the campaign finance system, then the Committee's investigative efforts will have failed in a principal purpose. Accordingly, the following section offers legislative recommendations to repair and strengthen the campaign finance system. Many of these proposals are included in S. 25, the McCain-Feingold campaign finance reform bill. The consideration by the Senate of that legislation, as well as other proposed campaign finance reforms, will be a measure of the lessons learned from the 1996 elections.

Legislative Recommendations on Campaign Finance Reform:

- O Eliminate Soft Money: Eliminating unrestricted contributions to political parties from individuals, corporations and unions is the most important step towards reducing the influence of money in the campaign finance system.** The McCain-Feingold proposal would ban soft money contributions to political parties. If the flow of soft money is not halted, the campaign finance abuses and loss of public confidence that tainted the 1996 elections are likely to worsen by the year 2000.

- O **Address Issue Advocacy: A soft money ban, however fundamental to reform, must be coupled with reforms addressing candidate advertisements masquerading as issue ads.** The McCain-Feingold proposal contains provisions which will bring advertisements that function as candidate ads, but use technicalities to avoid disclosure and contribution limits, within the same laws that govern other candidate ads. One of these provisions would require any communication that mentions a federal candidate within 60 days of a general election to comply with disclosure requirements and restrictions on the use of union and corporate funds. This provision would not prevent or ban any advertisement; it would provide limits on how certain ads may be financed.
- O **Strengthen and clarify the statutory prohibitions against foreign contributions and contributions in the name of another.** Currently, neither prohibition clearly applies to soft money donations, and the foreign money prohibition does not explicitly prohibit foreign nationals from participating in a campaign through direct expenditures.
- O **Give the Federal Election Commission the resources it needs to do its job.** Any reform, from the most modest improvements in disclosure to the most comprehensive revision of campaign financing, will not be complete if the agency charged with enforcing the law lacks the resources to do so.
- O **Give the Federal Election Commission the authority needed to enforce the law.** The Commission's enforcement authority should be strengthened and Commission procedures streamlined. Needed changes include:
 - O Increase the size of the Commission to an odd number of Commissioners to avoid voting deadlock.
 - O Grant the Commission the power to seek injunctions in federal court.
 - O Streamline the process for initiating investigations by eliminating requirements for a formal Commission vote and formal finding that a violation occurred.
 - O Permit the Commission to assess automatic fines for late disclosure reports.
- O **Improve public disclosure.** Disclosure is fundamental to informing voters and deterring corruption in the political process. Advances in technology make electronic disclosure of campaign reports a viable option that would make information about candidates' funding available to the widest possible audience in a timely manner.
 - O Mandate electronic filing for all candidates and political committees to speed the disclosure process and allow more disclosure to voters. Such a provision is contained in the McCain Feingold proposal and includes a waiver for candidates raising less than a certain threshold amount.

- O Require that disclosure reports of Senate candidates be filed directly with the FEC rather than with the Secretary of the Senate.
- O Require that all reports be electronically filed by the due date of the report.
- O Require committees raising in excess of \$100,000 per calendar year to file a monthly report.
- O Develop a constitutionally acceptable means to improve public disclosure of election-related issue advertising.
- O Require all issue advertising which identifies a specific federal candidate in an election year to include a disclaimer identifying the ad sponsor, and require the ad sponsor to provide additional information identifying any individual or organization providing significant funding for the communication.
- O For all contributions over \$1,000, require certification, under penalty of perjury, that a contribution meets the requirements of federal law, including that the contributor is a citizen or legal permanent resident and that the contribution was made from the funds of the contributor.**
- O Reduce the costs of campaigns.** During the 1996 campaign, federal candidates spent \$400 million on television advertising. Congress should consider mandating some free time from broadcasters as one way to decrease the amount candidates buy and parties are required to spend to get out their message.
- O Clarify and strengthen applicable tax law.** Tax exempt organizations have become increasingly influential in federal elections, while operating under legal requirements that provide insufficient guidance on permissible campaign activity and disclosure obligations.
- O Clarify campaign restrictions applicable to organizations operating under section 501(c)(4) of the tax code.** The current restrictions appear primarily in IRS regulations and require clarification regarding what social welfare organizations are legally permitted to do.
- O Ensure public disclosure of all organizations whose primary purpose is to influence elections by requiring that all organizations claiming an exemption from taxes under Section 527 also file with the FEC or the applicable state body.** This limitation would ensure that issue advocacy organizations claiming a section 527 exemption from taxation for the purpose of influencing federal elections do not circumvent the public disclosure requirements now applicable to other organizations established to influence federal elections.

- O Consider requiring the IRS to approve or disapprove all applications for tax exempt status within one year, and requiring that an application for exempt status be approved before an organization may hold itself out as tax-exempt.**

Recommended Procedures for Future Senate Investigations

- O Special investigations by the Senate into potentially serious misconduct by high level executive branch officials should be given a bipartisan structure similar to that of the Watergate and Iran-Contra committees.** The Committee undertaking such an investigation should consider the elevation of the Ranking Member to Vice Chair, and the hiring of a single chief of staff assisted by a nonpartisan staff to carry out the investigation.
- O The Senate should establish uniform protocols and procedures to govern special investigations.** Such process rules should mandate offering both Minority and Majority staff the opportunity to be present at all investigative interviews and depositions, establish notice requirements for the taking of depositions and calling witnesses at hearings, and establish procedures for the issuance of subpoenas. At a minimum, notice requirements should guarantee all witnesses and Committee Members at least 72 hours notice of persons being called to testify at a Committee hearing. Procedures concerning the use of classified information at public hearings should also be provided.
- O Procedures should be established for the consideration of requests for immunity.** Before a Committee vote is held on a grant of immunity, Committee Members should be fully informed of any proffer of testimony by the person requesting immunity and of the position of the Justice Department regarding the immunity request.

Other Recommendations

- O Democratic and Republican Parties:** Both parties should improve their procedures for ensuring the legality and propriety of the contributions they accept.
- O Republican Party:** To the extent the following foreign funds have not already been refunded, the Republican Party and its affiliate, the National Policy Forum, should immediately refund \$800,000 resulting from a 1996 loan default involving a foreign national and foreign dollars from Hong Kong; \$215,000 from a 1992 contribution by Michael Kojima utilizing foreign funds from Japan; \$50,000 from a 1996 contribution by Panda Industries, Inc., a company owned by a foreign national; and \$25,000 from a 1996 contribution by the Pacific Cultural Foundation, a foreign organization based in Taiwan.
- O Department of Commerce:** While the Department of Commerce has made changes to its procedures granting security clearances, the operation of the Commerce Department Security Office should be restructured to enhance communication between the divisions

and establish better procedures for tracking employee clearances.

- O Federal Bureau of Investigation:** The FBI should review its current provisions regarding security clearance procedures granted to legislative and executive branch employees and appointees and report its findings to the Committee.
- O Central Intelligence Agency:**
 - O** The CIA should consider establishing enhanced procedures and guidelines to maintain records of classified documents shown to executive branch officials. This investigation did not provide any evidence that the CIA improperly disseminated classified information to John Huang. However, the investigation did demonstrate that the CIA does not maintain complete records of all materials shown to individuals in the executive branch. Enhanced records would serve to protect the CIA from allegations of impropriety as well as function as an aid in investigating the merits of future allegations.
 - O** The CIA should consider establishing enhanced procedures and guidelines for the provision of information to other executive branch agencies. During this investigation, there was controversy over the National Security Council's request for, and the CIA's distribution of, information regarding Roger Tamraz. The Minority could not determine why reports from two CIA divisions were not consistent or complete or why one CIA division contacted the NSC for the purpose of providing information over the telephone that appeared to be inaccurate and unwanted. It is important for executive branch agencies to make use of information obtained by the CIA, but the general restrictions and determinations regarding that information should be known to both the CIA and the requesting agencies.